## REMARKS

The Office Action mailed February 11, 2005, has been received and reviewed. Claims 1 through 14, and 16 through 29 are currently pending in the application. Claims 1 through 14, and 16 through 29 stand rejected. Applicants have amended claims 1 and 21, and respectfully request reconsideration of the application as amended herein.

Applicants have amended claim 1 in an apparatus context to further define the spatial relationships of the sensor electrodes to be effective in rapidly measuring a level of a viscous fluid which leaves a residual film on the wall of a container as the liquid level decreases. Claim 21 has been similarly amended, albeit in a positive method context, to recite measuring the level of a viscous fluid in a container as the level decreases at a rate sufficient to leave a residual film of the viscous fluid on the wall of the container.

**Supplemental Information Disclosure Statement**

Please note that a Supplemental Information Disclosure Statement was filed herein on September 16, 2003, and that no copy of the form PTO/SB/08Awas returned with the outstanding Office Action. Applicants respectfully request that the information cited on the form PTO/SB/08A be made of record herein. For the sake of convenience, a second copy of the September 16, 2003, Supplemental Information Disclosure Statement, form PTO/SB/08A with copy of cited references, and USPTO date-stamped postcard are enclosed herewith. It is respectfully requested that an initialed copy of the form PTO/SB/08A evidencing consideration of all of the cited references be returned to the undersigned attorney. It is noted that the cited Baughman reference as well as the Supplemental European Search Report date May 27, 2003 have been separately made of record herein, but that the Oota et. Al., Shell International and KDI Precision references have apparently not been officially made of record according to Applicants' file. It is further noted that the referenced Supplemental Information Disclosure Statement was in fact received by the Examiner, as the Oota et al. reference was relied upon in the Office Action of October 21, 2003, but no copy of the form PTO/SB/08A filed September 16, 2003 was returned with that Office Action.

**35 U.S.C. § 102(b) Anticipation Rejections**

Anticipation Rejection Based on U.S. Patent No. 4,389,889 to Larson

Claims 1 through 6, 13, 14, 16 and 17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Larson '889 (U.S. Patent No. 4,389,889). Applicants respectfully traverse this rejection, as hereinafter set forth.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Claim 1, as amended herein, clearly patentably defines over Larson '889. The reference is directed to the detection of water in the bottom of a tank for holding a petrochemical fuel, such as diesel fuel or gasoline. Applicants note that the plate 20 placed at or near the bottom of a tank cooperates with plate 12 to detect the presence of water, due to the much greater dielectric constant thereof in comparison to diesel or gasoline. As noted in the specification of the reference, Col. 3, lines 18 to 24 and Col. 3, line 67 to Col. 4, line 4, plates 12-14, which completely overlap vertically, are used to detect the level of liquid in the tank. As referenced in Larson '889, this is the technique disclosed in the Larson U.S. Patent 4,201,085. Further, Applicants have more specifically defined the spatial relationship of their first and second sensor electrodes in the context of measurement of a decreasing level of a viscous fluid within a container on which the sensor is placed. There is no description in the reference of any such relationship with respect to any of plates 12-14 and 20.

Claims 2, 3, 4, 5, 6, 13, 14, 16 and 17 are allowable as depending from claim 1.

**35 U.S.C. § 103(a) Obviousness Rejections**

Obviousness Rejection Based on U.S. Patent No. 4,389,889 to Larson in view of U.S. Patent No. 4,201,085 to Larson

Claims 7, 8 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Larson (U.S. Patent No. 4,389,889) in view of Larson (U.S. Patent No. 4,201,085). Applicants respectfully traverse this rejection, as hereinafter set forth.

M.P.E.P. 706.02(j) sets forth the standard for a Section 103(a) rejection:

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

Claims 7, 8 and 12 are allowable as depending from claim 1. Larson '085 does not cure the deficiencies in the description of Larson '889 with respect to the limitations of claim 1. As noted above, Larson '889 merely adds a water presence detection capability to the apparatus of Larson '085.

Obviousness Rejection Based on U.S. Patent No. 4,389,889 to Larson in view of U.S. Patent No. 5,406,843 to Hannan et al.

Claims 9 through 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Larson (U.S. Patent No. 4,389,889) in view of Hannan et al. (U.S. Patent No. 5,406,843). Applicants respectfully traverse this rejection, as hereinafter set forth.

Claims 9 through 11 are allowable as depending from claim 1. Further, as previously noted by Applicant in a prior response, it appears that the Office has misinterpreted the Hannan et al. reference. Specifically, Col. 9, lines 63-66 discloses providing a *timing* or clock signal of about 2-8 Mhz to controller 16 to time its operation which, as noted at Col. 7, lines 7-37, cited by the Office, consists of "short duration DC pulses" and *not* an oscillating signal. There is no teaching that the *output* of controller 16 as an *input* to the electrodes is within a 2-8 Mhz range. In fact, Hannan et al. is silent on the issue as to what the drive frequency may be. The Col. 5 and Col. 7 citations referenced by the Office do not support the providing of an *oscillating input signal* as required by each of claims 9, 10 and 11, each require providing an oscillating signal to one of the first and second electrodes. Thus, in addition to not remedying the deficiencies of Larson '889 with respect to claim 1, Hannan et al. does not, in fact, provide a teaching or

suggestion of the limitations respectively set forth in each of claims 9,10 and 11.

Obviousness Rejection Based on U.S. Patent No. 4,389,889 to Larson in view of U.S. Patent No. 3,939,360 to Jackson

Claim 18 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Larson (U.S. Patent No. 4,389,889) in view of Jackson (U.S. Patent No. 3,939,360). Applicants respectfully traverse this rejection, as hereinafter set forth.

Claim 18 is allowable as depending from claim 1.

Obviousness Rejection Based on U.S. Patent No. 4,389,889 to Larson in view of U.S. Patent No. 5,051,921 to Paglione

Claim 19 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Larson (U.S. Patent No. 4,389,889) in view of Paglione (U.S. Patent No. 5,051,921). Applicants respectfully traverse this rejection, as hereinafter set forth.

Claim 19 is allowable as depending from claim 1.

Obviousness Rejection Based on U.S. Patent No. 4,389,889 to Larson in view of U.S. Patent No. 5,135,485 to Cohen et al.

Claim 20 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Larson (U.S. Patent No. 4,389,889) in view of Cohen et al. (U.S. Patent No. 5,135,485). Applicants respectfully traverse this rejection, as hereinafter set forth.

Claim 20 is allowable as depending from claim 1.

Obviousness Rejection Based on U.S. Patent No. 4,389,889 to Larson in view of U.S. Patent No. 5,406,843 to Hannan et al. and U.S. Patent No. 5,135,485 to Cohen et al.

Claims 21 through 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Larson (U.S. Patent No. 4,389,889) in view of Hannan et al. (U.S. Patent No. 5,406,843) and Cohen et al. (U.S. Patent No. 5,135,485). Applicants respectfully traverse this rejection, as hereinafter set forth.

Claim 21, as amended herein, is allowable for reasons similar to that advanced above

with respect to claim 1. It is noted that Larson, Cohen et al. and Hannan et al., in combination, fail to teach the method of claim 21 as now recited. Further, as noted above, there is no teaching in Hannan et al. of driving the capacitive structure at a frequency of more than about 1 MHz. Further, there is no motivation or suggestion, absent Applicants' own specification, of combining the Larson and Hannon et al. references nor would there be, absent reliance upon Applicants' own specification, any reasonable expectation of success of such a combination. Claims 23 and 24 are allowable for the same reasons.

Claims 22, 25, 26, 27, 28 and 29 are allowable as depending from claim 21.

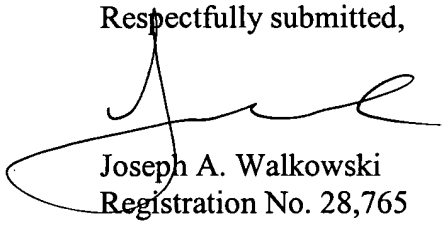
## ENTRY OF AMENDMENTS

The amendments to claims 1 and 21 above should be entered by the Examiner because the amendments are supported by the as-filed specification and drawings and do not add any new matter to the application. Further, the amendments do not raise new issues or require a further search.

## CONCLUSION

Claims 1-14 and 16-29 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, he is respectfully invited to contact Applicants' undersigned attorney.

Respectfully submitted,



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